

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 195

HOUSE BILL 2470

AN ACT

AMENDING SECTIONS 11-584 AND 41-4301, ARIZONA REVISED STATUTES; RELATING TO
THE PUBLIC DEFENDER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-584, Arizona Revised Statutes, is amended to
3 read:

4 11-584. Public defender; duties; reimbursement

5 A. The public defender shall, ~~perform the following duties:~~

6 ~~1. upon~~ ON order of the court, defend, advise and counsel without
7 ~~expense to the defendant, subject to subsection B of this section,~~ any person
8 WHO IS ENTITLED TO COUNSEL AS A MATTER OF LAW AND who is not financially able
9 to employ counsel in the following proceedings and circumstances:

10 (a) 1. Offenses triable in the superior court or justice courts at
11 all stages of the proceedings, including the preliminary examination, ~~but~~
12 ~~only for those offenses which by law require that counsel be provided.~~

13 (b) 2. Extradition hearings.

14 (c) 3. Sanity MENTAL DISORDER hearings only when IF appointed by the
15 court under title 36, chapter 5.

16 (d) 4. Involuntary commitment hearings held pursuant to title 36,
17 chapter 18, only if appointed by the court.

18 (e) 5. Involuntary commitment hearings held pursuant to title 36,
19 chapter 37, when IF appointed by the court as provided in section 36-3704,
20 subsection C, ~~if the court appoints the public defender and the board of~~
21 ~~supervisors has advised the presiding judge of the county that the public~~
22 ~~defender is authorized to accept the appointment~~ THESE APPOINTMENTS.

23 (f) 6. Juvenile delinquency and incorrigibility proceedings only when
24 IF appointed by the court under section 8-221.

25 (g) 7. Appeals to a higher court or courts.

26 (h) 8. All juvenile proceedings other than delinquency and
27 incorrigibility proceedings under subdivision (f) PARAGRAPH 6 OF THIS
28 SUBSECTION, including serving as a guardian ad litem, when IF appointed by
29 the court pursuant to section 8-221, ~~if the court appoints the public~~
30 ~~defender and the board of supervisors has advised the presiding judge of the~~
31 ~~county that the public defender is authorized to accept the appointment~~ THESE
32 APPOINTMENTS.

33 (i) 9. All mental health hearings regarding release recommendations
34 held before the psychiatric security review board pursuant to section
35 13-3994, when IF appointed by the court as provided in section 31-502,
36 subsection A, paragraph 8, ~~if the court appoints the public defender and the~~
37 ~~board of supervisors has advised the presiding judge of the superior court in~~
38 ~~the county that the public defender is authorized to accept the appointment~~
39 THESE APPOINTMENTS.

40 (j) 10. As attorneys pursuant to title 14, chapter 5, article 4 of
41 ~~adults who are allegedly unable to effectively manage their affairs or~~
42 ~~preserve their estates;~~ IN ANY OTHER PROCEEDING OR CIRCUMSTANCE IN WHICH A
43 PARTY IS ENTITLED TO COUNSEL AS A MATTER OF LAW if the court appoints the
44 public defender and the board of supervisors has advised the presiding judge

1 of the county that the public defender is authorized to accept the
2 ~~appointment~~ THESE APPOINTMENTS AS SPECIFIED.

3 B. THE PUBLIC DEFENDER SHALL PERFORM THE FOLLOWING DUTIES:

4 ~~2-~~ 1. Keep a record of all services rendered by the public defender
5 in that capacity and file with the board of supervisors an annual report of
6 those services.

7 ~~3-~~ 2. By December 1 of each year, file with the presiding judge of
8 the superior court, the chief probation officer and the board of supervisors
9 an annual report on the average cost of defending a felony case.

10 ~~B-~~ C. Although the services of the public defender or court appointed
11 counsel shall be without expense to the defendant, THE JUVENILE, A PARENT OR
12 ANY OTHER PARTY, the court may make the following assessments:

13 1. Order an indigent administrative assessment of not more than
14 twenty-five dollars.

15 2. Order an administrative assessment fee of not more than twenty-five
16 dollars to be paid by the juvenile or the juvenile's parent or guardian.

17 3. Require that the defendant, including a defendant who is placed on
18 probation, A JUVENILE, A PARENT OR ANY OTHER PARTY WHO IS APPOINTED COUNSEL
19 UNDER SUBSECTION A OF THIS SECTION repay to the county a reasonable amount to
20 reimburse the county for the cost of the ~~defendant's~~ PERSON'S legal defense
21 SERVICES.

22 4. Reimbursement for legal services ~~provided to a juvenile~~ IN A
23 DELINQUENCY, DEPENDENCY OR TERMINATION PROCEEDING shall be ordered pursuant
24 to section 8-221.

25 5. REIMBURSEMENT FOR LEGAL SERVICES IN A GUARDIANSHIP OR
26 CONSERVATORSHIP PROCEEDING SHALL BE ORDERED PURSUANT TO SECTION 14-5414.

27 ~~C-~~ D. In determining the amount and method of payment the court shall
28 take into account the financial resources of the defendant and the nature of
29 the burden that the payment will impose.

30 ~~D-~~ E. Assessments collected pursuant to subsection ~~B-~~ C of this
31 section shall be paid into the county general fund in the account designed
32 for use solely by the public defender and court appointed counsel to defray
33 the costs of public defenders and court appointed counsel. The assessments
34 shall supplement, not supplant, funding provided by counties for public
35 defense, legal defense and contract indigent defense counsel in each county.

36 Sec. 2. Section 41-4301, Arizona Revised Statutes, is amended to read:

37 41-4301. State capital postconviction public defender; office;
38 appointment; qualifications; powers and duties

39 A. The state capital postconviction public defender office is
40 established.

41 B. The state is responsible for funding the state capital
42 postconviction public defender office, including start-up costs.

43 C. The governor shall appoint the state capital postconviction public
44 defender and fill any vacancy in the office on the basis of merit alone
45 without regard to political affiliation from the list of names that are

1 submitted pursuant to sections 41-4302 and 38-211. The state capital
2 postconviction public defender serves a four year term and serves until the
3 appointment and qualification of a successor in office. After appointment,
4 the state capital postconviction public defender is subject to removal from
5 office only for good cause as determined by a majority vote of the
6 nomination, retention and standards commission on indigent defense. A
7 vacancy shall be filled for the balance of the unexpired term.

8 D. The state capital postconviction public defender shall meet all of
9 the following criteria:

10 1. Be a member in good standing of the state bar of Arizona or become
11 a member of the state bar of Arizona within one year after appointment.

12 2. Have been a member of the state bar of Arizona or admitted to
13 practice in any other state for the five years immediately preceding the
14 appointment.

15 3. Have had substantial experience in the representation of accused or
16 convicted persons in criminal or juvenile proceedings.

17 4. Meet or exceed the standards for appointment of counsel in capital
18 cases under rule 6.8, Arizona rules of criminal procedure, as determined by
19 the nomination, retention and standards commission on indigent defense.

20 E. The salary of the state capital postconviction public defender
21 shall equal the annual salary of the chief counsel of the capital litigation
22 section in the office of the attorney general.

23 F. The state capital postconviction public defender shall:

24 1. Represent any person who is not financially able to employ counsel
25 in postconviction relief proceedings in state court after a judgment of death
26 has been rendered. Notwithstanding section 11-584, subsection A, paragraph
27 ~~1, subdivision (g)~~ 7, after a judgment of death has been rendered, a county
28 employed indigent defense counsel shall not handle postconviction relief
29 proceedings in state court unless a conflict exists with the state capital
30 postconviction public defender and a county employed indigent defense counsel
31 is appointed.

32 2. Supervise the operation, activities, policies and procedures of the
33 state capital postconviction public defender office.

34 3. Beginning in fiscal year 2007-2008, submit an annual budget for the
35 operation of the office to the legislature.

36 4. Not engage in the private practice of law or provide outside
37 counsel to any other attorney outside of the state capital postconviction
38 public defender office.

39 5. Not sponsor or fund training for any other attorney outside of the
40 state capital postconviction public defender office.

41 6. Not provide trial or direct appeal assistance to attorneys outside
42 of the state capital postconviction public defender office.

43 7. Not lobby, during working hours, the state legislature or the
44 Congress of the United States, except as provided by paragraph 3 of this
45 subsection.

1 8. Allocate personnel and resources to postconviction relief
2 proceedings so long as there are no conflicts of interest in representation
3 and all state capital postconviction public defender attorneys are appointed
4 to postconviction relief cases that are eligible for appointment of counsel
5 under section 13-4041.

6 G. The state capital postconviction public defender may:

7 1. Accept and spend public and private gifts and grants for use in
8 improving and enhancing the ability to perform the responsibilities of the
9 state capital postconviction public defender office pursuant to this chapter.

10 2. Employ not more than three deputies and not more than four other
11 employees and establish and operate any offices as needed for the proper
12 performance of the duties of the office.

13 H. For each person represented, the state capital postconviction
14 public defender office shall request reimbursement from the county in which
15 the person was convicted for fees it incurs pursuant to this section arising
16 out of its representation of that person. The county shall pay fifty per
17 cent of the fees incurred by the state capital postconviction public defender
18 office not to exceed thirty thousand dollars per case.

APPROVED BY THE GOVERNOR APRIL 28, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2010.